

Office of the Yavapai County Attorney
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FILED
11:55 o'clock A M
AUG 13 2010
JEANNE HICKS, Clerk
BY *[Signature]* Deputy

IN THE SUPERIOR COURT OF STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

IDENTIFICATION OF CONFLICTS

Honorable Warren Darrow
Division 6

FILED UNDER SEAL

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby sets forth actual/potential conflict issues created by attorney John Sears that are relevant to the Hartford Life Insurance body of evidence.

1. Evidence pertaining to the life insurance proceeds Disclaimers:

a. On or about September 3, 2008, Defendant copied Attorney Sears with his letter to the Hartford Insurance Company inquiring how to disclaim death benefit proceeds.

b. Attorney Sears has personal knowledge of Hartford Life Insurance requirement for notarized disclaimers and upon information and belief received the unsigned disclaimers from the Law Firm of Murphy, Schmitt, Hathaway and Wilson, P.L. L. C.

1 c. The disclaimer's for the Hartford Life Insurance policies state that Steven C.
2 DeMocker:

3 "hereby irrevocably and unconditionally disclaim any and all interest in said
4 policy as beneficiary and owner, including any and all right and interest to the
5 death benefit and/or proceeds payable under the policy by reason of the death
of the insured, carol Kennedy."

6 d. Attorney Sears witnessed and notarized Defendant's signature on three (3)
7 disclaimers, on two separate occasions, dated March 3 and March 24, 2009.

8 e. Attorney Sears forwarded the executed disclaimers to the Law Firm of Murphy,
9 Schmitt, Hathaway and Wilson, P.L. L. C, knowing the disclaimers would induce the Hartford
10 Life Insurance company to pay the proceeds to the Estate of Virginia Carol Kennedy and to the
11 Virginia Carol Kennedy Testamentary Trust.

12
13 **2. Evidence pertaining Virginia Carol Kennedy Testamentary Trust:**

14 a. On or about July 10, 2009, Attorney Sears witnessed and obtained Defendant's
15 signature, as guardian for Charlotte DeMocker, on a document that accepting the resignation
16 of Katherine DeMocker and the appointment of Renee Girard, the girlfriend of DeMocker, as
17 Successor Trustee of the Virginia Carol Kennedy Testamentary Trust;

18
19 b. Attorney Sears has personal knowledge concerning the delivery of Katie's
20 DeMocker's resignation as Trustee and the appointment of Renee Girard to Attorney Chris
21 Kottke.

22 c. Attorney Sears provided legal advice to Renee Girard prior to her acceptance of the
23 duties as Successor Trustee of the Virginia Carol Kennedy Testamentary Trust;

24 d. Upon information and belief, Attorney Sears has personal knowledge of Renee
25 Girard's moving \$350,000.00 from the Virginia Carol Kennedy Testamentary Trust into the
26 bank account of Steven C DeMocker and Charlotte DeMocker.

1 e. Attorney Sears has personal knowledge that Katie DeMocker and Charlotte
2 Democker were the named beneficiaries under the Virginia Carol Kennedy Testamentary
3 Trust.

4 **3. State's good faith assessments as to attorney John Sears conflicts:**

5 a. Attorney Sears participated in obtaining Defendant's executed Disclaimers in order
6 to get the Hartford Insurance Company to release the death benefit proceeds when he knew or
7 should have know the Disclaimers misrepresented his clients intent.
8

9 b. Attorney Sears' direct involvement in obtaining his client's signature on the
10 Disclaimers which then secured payment from the Hartford Insurance Company of the death
11 benefits proceeds, precludes the defense team from any meaningful cross examination of the
12 State's witnesses on this issue.

13 c. On June 3, 2010, during his Opening Statement, John Sears, counsel for DeMocker
14 told the jury:
15

16 "Let's talk about what the evidence will really show about the life insurance
17 policies. ... But \$750,000 in two policies on Carol's life. ... Those policies
18 weren't mentioned in the divorce. They weren't divided in the divorce. They
19 weren't dealt with. They were just there. ...

20 Mr. DeMocker then persuaded them [Hartford Insurance Co.] that Mr.
21 DeMocker would disclaim this money. You will hear from Katie and
22 Charlotte that their father told them from the beginning, this is your money
23 from your mother. This isn't mine. He disclaimed, he signed over any interest
24 to the girls, and **the money was paid out to the girls**. That is what happened
25 in this case. So the idea dangling after the State's opening that Mr. DeMocker
26 killed her for the insurance money, has to be measured against what the
evidence really would be.

... Wouldn't it be unusual and a head-scratcher **if he didn't get that money
for the girls, which is where the money went in this case?** That's the
motive. That is a hundred percent of the motive. He killed her because he
didn't want to pay her the alimony. He killed her over the squabble over the
\$4,500, and killed her for the insurance money in this case."

1 d. Katie DeMocker and Charlotte DeMocker were the first witnesses called by the
2 State in this case. These witnesses have personal knowledge of matters pertaining to the
3 Estate of Virginia Carol Kennedy and of the Virginia Carol Kennedy Testamentary Trust, the
4 Hartford Life Insurance death benefit proceeds and the succession of trustees. Attorney Sears,
5 nor any member of the defense team asked a single question of these witnesses about the
6 Disclaimer and the receipt of monies from the death benefit proceeds. This demonstrates the
7 chilling effect on attorney Sears and other members of the defense team precluding them from
8 asking any questions of these "friendly witnesses" to disprove the allegation that defendant
9 murdered Carol Kennedy for pecuniary gain.
10

11 e. The State will be calling Renee Girard about her involvement in the disbursement of
12 the Hartford Insurance death benefit proceeds in her role as successor trustee. Ms. Girard will
13 testify that attorney Sears persuaded her to accept the duties and responsibilities of Successor
14 Trustee for the specific purpose of paying \$350,000.00 dollars of the death benefit proceeds
15 into an account owned by his client, the defendant and Charlotte DeMocker.
16

17 f. The State will present witnesses to prove Defendant's plan to obtain the Hartford Life
18 Insurance death benefit proceeds in order to prove the motive of pecuniary gain. Attorney
19 Sears, nor any member of the defense team can effectively cross examine those witnesses
20 because the evidence proves that attorney Sears was directly involved in the plan and was in
21 fact instrumental in obtaining the proceeds for his client's benefit.
22
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1 **4. Guidance for handling a conflict of interest.**

2 In the case of State v. Bell, CR20080560, in and for the County of Coconino¹, Judge
3 Jeffrey Coker was faced with a serious conflict of interest and his handling of the issues offers
4 guidance for the Court. Following is the colloquy between the Judge Coker and the defendant.

5 The Court: Mr. Bell, **the legal system is very concerned about not only**
6 **propriety, but the appearance of impropriety. We want to make sure**
7 **everybody understands everything is above board and nobody is doing**
8 **things behind the scenes: do you understand that?**

9 Defendant: Yes, sir.

10 ...

11 The Court: Number two, it sort of falls on your shoulders, and that is that
12 you need to understand what the conflict is, because you can waive it. In other
13 words, you can say I understand that there is this appearance, but I waive that
14 problem, there is not a problem. The question is, is if you waive for good. You
15 cannot come back later and say, say you went to trial and say you were
16 convicted in this matter or you have entered into a plea and you were sentenced
17 ion this matter, you cannot come back later and then say, I didn't understand
18 what the conflict was. Okay?

19 So I have two issues here to talk with you about it. Number one is, do
20 you understand what I am talking about when I mention this conflict? Do you
21 sir?

22 Defendant: Yes, sir.

23 The Court: Okay. Your attorney has explained what we are talking about
24 here/

25 Defendant: Yes, sire.

26 The Court: Although Ms. Sedillo, his wife, has no connection with the
lawsuit, she still works for the prosecutor's office, although she has no affect on
your case, do you understand?

Defendant: Yes.

¹ This case is currently in Post-Conviction status on a claim of ineffective assistance of counsel.

1 The Court: Other than what has happened before your attorney was
involved in the case, do you understand?

2
3 Defendant: Yes.

4 The Court: Okay. **Now that is number one that you understand what**
5 **the conflict is. Number two, you really do need to understand once you**
6 **say, I waive the conflict, I want my attorney to continue to represent me,**
7 **then whatever happens, happens and you are stuck with that result: do you**
8 **understand that?**

9 Defendant: Yes, sir.

10 The Court: Okay, are you willing to waive those conflicts, sir?

11 Defendant: Yes, sir.

12 The Court: You understand it fully, correct?

13 Defendant: Yes.

14 The Court: Why don't you tell me what you understand?

15 Defendant: Basically, I got that she works with the prosecutor's office and
16 she has no – she cannot look into – she can look into my file, but not get
involved in my case, and since my attorney knows her, they can't be giving
information to each other to help me out in my case. I understand.

17 The Court: You do understand, I am glad of that. **And you understand if**
18 **you waive this conflict, you can't use it later on, it is a done deal, it is over**
19 **with: do you understand?**

20 Defendant: Yes. Sir

21 Exhibit A, Reporter's Transcripts of Proceedings dated July 29, 2009, Pg. 22:16-25:17.
(emphasis added).

22 **CONCLUSION**

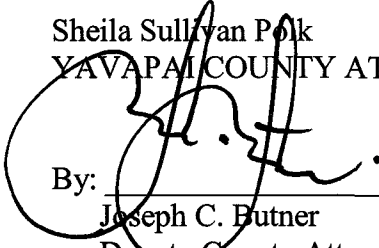
23 The issues specifically identified herein give the Defendant a colorable claim of
24 ineffective assistance of counsel on appeal, or any post conviction relief proceedings, including
25 a federal Habeas Corpus proceeding. The defense team is in the position of not being able to
26 effectively cross examining any witness concerning the motive of pecuniary gain related to the

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1 life insurance proceeds. Defendant requires the assistance of independent counsel in order to
2 make a knowing, intelligent and voluntary waiver.

3 RESPECTFULLY SUBMITTED this 13th day of August, 2010.
4

5 Sheila Sullivan Polk
6 YAVAPAI COUNTY ATTORNEY

7 By: 
8 Joseph C. Butner
9 Deputy County Attorney

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COPIES of the foregoing delivered this
13th day of August 2010, to:

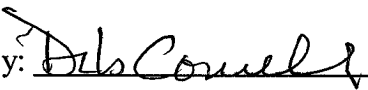
Honorable Warren Darrow
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(via email)

By: 

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF COCONINO
3

4 STATE OF ARIZONA,)
5)
6 Plaintiff,)
7)
8 vs.)
9)
10) CR 08-0560
11 NATHAN BELL,)
12)
13 Defendant.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

12 Flagstaff, Arizona

13 July 29, 2008

14 10:30 a.m.

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 HON. JUDGE JEFFREY COKER

24 PATRICIA YERKES, RMR-RDR, CRR

25 Certified Reporter #50787

EXHIBIT A

1
2 APPEARANCES:

3
4 ADAM ZICKERMAN, ESQ.
5 DEPUTY COUNTY ATTORNEY
6 110 E. Cherry Street
7 Third Floor
8 Flagstaff, Arizona 86001

9
10 TONY GONZALES, ESQ.
11 305 E. Cherry, #200
12 Flagstaff, Arizona 86001
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P R O C E E D I N G S

THE COURT: This is the time and date set in the matter of State of Arizona versus Nathan Jason Bell, 2008-0560, this is the time set for a hearing on Conditions of Release. A motion was filed by the defense, a response was filed by the State, and then an addendum filed by the State. I have reviewed those documents.

Counsel, do you have anything that you would like to present on behalf of defense?

MR. GONZALES: I will -- Your Honor, with a couple of issues, the first issue being that we had requested that the Defendant be released to a third party who is his brother, and that at the last minute he was not able to make it here, so we would have to make that amendment. Of course, to request he be released to Pretrial Services.

The other issue, Your Honor, is when we filed this action, we didn't have -- the Defendant was not as forthcoming with us with any arrests he had had in the past, but it was brought to our attention, but we know for the Judge's attention those were arrests only, and not convictions, and that is it for now Your Honor.

THE COURT: Okay. Thank you very much.

1 Does the State have anything that you would like to
2 add?

3 MR. ZICKERMAN: The State has a witness to
4 present to the Court.

5 THE COURT: Okay. Does the defense have
6 any witnesses that you need to present?

7 MR. GONZALES: No.

8 THE COURT: Mr. Zickerman, you may proceed.

9 MR. ZICKERMAN: The State would call
10 Detective Deloria.

11 THE COURT: Sir, if you would come up to
12 the clerk's station. Raise your right, raise your
13 right hand, she will administer the oath.

14 DET. CHRISTOPHER DELORIA, STATE'S WITNESS, SWORN

15 THE COURT: Please, if you would take the
16 stand. Take the witness stand.

17 MR. ZICKERMAN: Judge, before I begin, I
18 noticed in my file copy of the State's response to
19 the motion that I have, page 13, I just wanted to
20 make sure the Court had pages one, two, and three.
21 I have one and three.

22 THE COURT: Yup, I do. I don't remember
23 any problems. Thank you.

24 MR. ZICKERMAN: I just want to make sure.

25 / / /

DIRECT EXAMINATION

BY MR. ZICKERMAN:

Q. Sir, would you introduce yourself to the Court, please?

A. My full name is Christopher Jerome Deloria, I am a detective with the Coconino County Sheriff's Office.

Q. How long have you been a detective?

A. A little over one year.

(Reporter requested
spelling)

A. D-e-l-o-r-i-a.

Q. How long have you been with the Sheriff's Office?

A. I've been with the Sheriff's Office approximately five years.

Q. And how did you become involved in this particular case?

A. On June 28th, 2008, shortly before 6:00 a.m., I was the on-call detective for that weekend. I received a phone call at my residence from Deputy Mike Curtis informing me about that incident.

Q. Have you worked with Mike Curtis before?

A. I have.

Q. Have you found his reports to be reliable?

1 A. Yes.

2 Q. Is his veracity intact?

3 A. Yes. And further, I was also his field training
4 officer while I was still on patrol.

5 Q. Please continue. What did you do after you
6 received the phone call?

7 A. I received an immediate briefing from Deputy
8 Curtis via telephone at my residence and a decision
9 was made for me to respond to his location where he
10 was being assisted by Deputy Moran.

11 Q. Where was that location?

12 A. They were currently in the parking lot of the
13 air museum, in Valle, Arizona, in the intersection
14 of Highway 164 and Highway 180.

15 Q. Is that in Coconino County?

16 A. Yes, sir.

17 Q. What happened after you got there?

18 A. After immediately arriving, I spoke with Deputy
19 Curtis to go over the case one more time and the
20 information that he had compiled just prior to my
21 arrival. Deputy Curtis informed me he had completed
22 a full interview with the victim at that time. I
23 was also informed that the interview was recorded.
24 Deputy Curtis was able to answer my questions that I
25 had immediately, therefore, the decision was made to

1 not re-interview the victim at the time, also due to
2 the fact that she was very upset about the incident
3 and reluctant to talk.

4 Q. Let's talk about that interview between Mike
5 Curtis and the victim, what, if anything, was
6 learned?

7 A. Short synopsis was given to me at approximately
8 12:30 to 1:00 a.m. on June 28th, Mr. Nathan Bell
9 arrived at her residence and knocked on the door.
10 Just prior to the knock on the door, I learned that
11 the victim, JoDonna Tso, had returned home from
12 work, had taken a shower, and was preparing for bed
13 for the evening. Mr. Bell knocks on the door, as I
14 mentioned earlier and asks to use the restroom. The
15 victim stated that she gave permission for Mr. Bell
16 to use the restroom. Just after using it, she was
17 asking him to leave, or she also stated he did not
18 want to leave, and wanted to speak with her. During
19 the conversation he came on to her in some way, and
20 eventually brought her to the ground in the living
21 room of her residence and sexually assaulted her.

22 Q. When we talk about "brought her to the ground,"
23 was this a gentle, or forceful action?

24 A. It was explained to me she was actually thrown
25 to the ground.

1 Q. What happened after she was thrown to the
2 ground?

3 A. He began to remove her clothes and sexually
4 assaulted her there on the living room floor, this
5 included vaginal and anal penetration, as well as
6 other injuries to the rest of her body.

7 Q. Vaginal and anal penetration, was that solely
8 digital, or penial or both?

9 A. Both.

10 Q. Did he make any statements to the victim while
11 engaging in such activity?

12 A. I didn't hear the statement, this came from
13 Deputy Curtis, but he stated in quotation, a direct
14 statement that Mr. Bell made to JoDonna Tso is: "I
15 am going to fuck you until you bleed."

16 Q. Did he make any other statements?

17 A. That I do not know. I would have to review
18 Deputy Curtis's report and the interview.

19 Q. At any time, did the victim in this case tell
20 him to "stop," say "no," anything along those lines?

21 A. Yes, I believe she repeatedly told the suspect
22 "no."

23 Q. Was the victim eventually taken to forensic
24 interview? Forensic exam done?

25 A. Yes, later on that morning, after my arrival, I

1 began the arrangements to have JoDonna Tso brought
2 to NACSA, for a forensic examination done by a SANE
3 nurse. I was able to put one together at the
4 medical center at the Grand Canyon. I would have to
5 refer to my notes, but the medical exam was done by
6 a SANE nurse, and all evidence was obtained by her.

7 Q. Was there any injuries?

8 A. Yes. After reviewing the sexual assault report
9 provided by the SANE nurse, I noted there were 28
10 injuries total.

11 Q. Were there any injuries directly to the anus or
12 vagina?

13 A. Yes.

14 Q. What were they?

15 A. There was a tear to the anus and some redness
16 and soreness to the vagina.

17 Q. Have you had a chance to interview the Defendant
18 about the altercation?

19 A. After he was taken into custody that night, I
20 did interview the Defendant, Nathan Bell, at the
21 Coconino County Sheriff's Office after he was
22 transported by Deputy Robert McKiveer. At Williams
23 substation, I met with Deputy McKiveer there, and
24 custody was turned over of Mr. Bell from him to me.
25 I conducted an interview with him, approximately 35

1 minutes; after the interview, I was the one that
2 booked the Defendant into the Coconino County
3 Detention Facility.

4 Q. Did the Defendant make any incriminating
5 statements during your interview?

6 A. No, he denied the incident.

7 Q. He denied the incident totally?

8 A. He did admit to going over there, he stated he
9 went over there with his girlfriend, Donna Morado,
10 however, stated that Mrs. Tso or Ms. Tso came on to
11 him, and he denied her sexual advances and left with
12 his girlfriend.

13 Q. You are saying, essentially, it never happened?

14 A. He is saying it never happened.

15 Q. Have you had a chance to review Mr. Bell's
16 criminal history at all?

17 A. I did.

18 Q. What, if anything, did you find?

19 A. I did not find anything of this nature in his
20 criminal history, however, I did find a Warrant for
21 his arrest out of Greeley, Colorado. The Warrant is
22 only extraditable in neighboring counties; the
23 Warrant is for a Failure to Appear under an original
24 charge of Possession of Alcohol, Under the Age of
25 21, and Possession of Marijuana Paraphernalia.

1 Q. Have you noticed -- have you had a chance to
2 look to see if he has any pending cases in Arizona?

3 A. In Arizona, I don't have any information on.

4 Q. Do you know of any other arrests that he has in
5 Colorado?

6 A. In Colorado, no.

7 Q. Anywhere else?

8 A. I am currently working on -- we are awaiting
9 some response from the state of Wyoming, I don't
10 have any information as of yet.

11 MR. ZICKERMAN: That is all of the
12 questions that I have, Judge. Thank you.

13 THE COURT: Thank you. Counsel.

14 CROSS-EXAMINATION

15 BY MR. GONZALES:

16 Q. Detective, did you interview Donna Morado?

17 A. I did not. That night I did not. Let me take
18 that back, I did later.

19 Q. Okay. Can you describe, I guess briefly, what
20 she discussed with you?

21 A. She was originally interviewed by Sergeant Jason
22 Lurkins of the Coconino County Sheriff's Office that
23 evening, after the two subjects were located. I did
24 not interview her, until the 2nd of July, which I do
25 not have a supplemental report completed today.

1 However, the brief synopsis of her interview was
2 that she did go over there with Nathan, they had a
3 30-pack of Budweiser beer. She stated she drank
4 approximately two or three, and that Mr. Bell had
5 drank approximately 28 of those beers. She stated
6 that she went over there, at first she took a
7 shower, then she recanted that story, but she did
8 ultimately state that she did see sexual intercourse
9 taking place between Nathan Bell and JoDonna Tso,
10 and she also made statements to Jason Lykins in her
11 original interview was that she did hear Mrs. Tso
12 saying, "Stop it, get off me."

13 Q. Were there any, as part of the forensic
14 examination, were there any blood samples that were
15 tested?

16 A. They were sent over to the lab, I don't have any
17 results as of yet.

18 Q. Okay.

19 MR. GONZALES: That is it, Your Honor.

20 THE COURT: Okay. Mr. Zickerman.

21 MR. ZICKERMAN: No, Judge.

22 THE COURT: Okay, Deputy, could I ask you a
23 couple of questions? Did the victim know the
24 Defendant before this took place?

25 THE WITNESS: Yes, they did know each

1 other. I would have to refer to my notes for exact
2 time frame, but approximately five weeks Mrs. Tso or
3 Ms. Tso lived at a residence with the Defendant for
4 approximately one week, before she was given or
5 obtained her own private residence.

6 THE COURT: That is how she was able to
7 identify him. She knew, he was not a stranger to
8 her?

9 THE WITNESS: She does know him.

10 THE COURT: And just to confirm,
11 Ms. Morado, which is the Defendant's girlfriend; is
12 that correct?

13 THE WITNESS: Yes sir.

14 THE COURT: Did she confirm she saw the
15 sexual acts taking place and hear the victim say to
16 "stop"?

17 THE WITNESS: Yes, Your Honor, those are
18 statements coming from Mrs. Morado.

19 THE COURT: Okay. Thank you. That is all
20 of the questions that I have. Thank you very much
21 for coming today, sir. You are excused to leave or
22 stay.

23 MR. ZICKERMAN: The victim advocate is here
24 to make a statement on behalf of the victim.

25 THE COURT: If you will come forward.

1 VICTIM ADVOCATE: I work with Victim
2 Witness Services for Coconino County, I obtained a
3 statement from JoDonna, via telephone, she doesn't
4 live in Flagstaff.

5 Your Honor, it is not safe for someone like
6 him to be out in public. He is dangerous. I don't
7 think that his bail should be lowered, it will just
8 make it easier for him to get out. He is so
9 dangerous, JoDonna Tso.

10 THE COURT: Thank you very much, Ma'am.
11 Thank you for coming today. Anything further,
12 Mr. Zickerman?

13 MR. ZICKERMAN: Judge, with regard to the
14 conditions of release hearing, no. There is another
15 issue that the State would ask the Court to take up
16 after this hearing.

17 THE COURT: Okay. Counsel, anything else?

18 MR. GONZALES: No, Your Honor.

19 THE COURT: Okay, would you like to present
20 anything else, any closing arguments concerning the
21 release issue?

22 MR. GONZALES: Thank you, Your Honor.

23 Thank you, Your Honor. Of course, we have
24 heard testimony with respect to the alleged
25 incident, the alleged crime, and we still resort to

1 the fact this is a young individual, he doesn't have
2 a criminal history. He was arrested apparently on
3 two charges, but he has no convictions. This
4 gentleman is put in a position where his family is
5 from Wyoming, they don't have money to pay the bond
6 that was placed on him at \$50,000. The family has
7 indicated to us that they do want to take over and
8 take control of him and allow him to receive the
9 type of treatment he needs to receive, but as part
10 of doing that, they would like him to be out, so he
11 can live with his brother or other family members
12 and he can actually work and try to get his life
13 back in order.

14 I know that he has not graduated yet, and
15 he intends to get a GED in the future.

16 You know, the last thing that we would
17 actually purport to the Judge is, in this case, you
18 know, we believe there are issues with respect to
19 his mental capacity anyway. The gentleman had
20 surgery as a baby, he has always had a learning
21 disability, but he has never had a criminal past, a
22 violent past, as the officer said with respect to
23 this type of crime.

24 And finally, Your Honor, we ask that this
25 particular Defendant would not flee. He has no

1 vehicle, he has no money, there is nowhere else for
2 him to go, but to stay here and face the charges he
3 has here in Coconino County.

4 With that, Your Honor, we ask the Defendant
5 be released to Pretrial Services, upon his own
6 recognizance, or if a bond is granted, significantly
7 reduced. Thank you, Your Honor.

8 THE COURT: Thank you. Mr. Gonzales,
9 appreciate your comments. Mr. Zickerman, in
10 closing.

11 MR. ZICKERMAN: Judge, the Court can take
12 factors under 13-3967, to review whether or not this
13 individual should have any modifications as it
14 relates to the condition; the State contends no
15 modification is warranted at this time.

16 The views of the victim, the Court has
17 heard the statement by the victim representative.
18 This individual is a dangerous person. The nature
19 and circumstances of the offense and the weight
20 against the accused, both factors that the Court can
21 take into consideration; the Defendant grabbed the
22 victim, and took her to the floor of her own
23 residence and engaged in sexual intercourse, without
24 her consent, with penial penetration and digital
25 penetration, and made a statement he was going to,

1 quote, Fuck her from the back, until she bleeds.
2 The State intends to produce this testimony, not
3 only here, but at trial.

4 With regards to his family ties,
5 employment, financial resources and mental
6 condition, although counsel here says that he has a
7 mental condition, no evidence has been presented or
8 testimony elicited to support such allegation.

9 The only thing that is true, Judge, he has
10 almost no connection to Flagstaff, which would give
11 him a greater reason to run, as he has already
12 demonstrated with the Greeley County Warrant, which
13 reluctantly is only for the adjacent counties, in
14 Colorado.

15 His record of arrests the Court can
16 consider. Although they may just be arrests, there
17 is one pending in this particular jurisdiction in
18 Flagstaff Justice Court, which is an Assault,
19 Domestic Violence, which occurred May 30th, 2008,
20 although it is pending, the Court can take that into
21 consideration.

22 He also has a Failure to Appear out of
23 Greeley County, which the Warrant stems from. If
24 anything, it shows the Court that he is amenable to
25 comply. He is not amenable to staying where he

1 needs to and facing the charges that come to him.
2 Any modification at this point in time is not
3 warranted. The State would ask the Court to deny
4 the motion on behalf of the Defendant.

5 THE COURT: Mr. Gonzales, anything in
6 closing?

7 MR. GONZALES: No, Your Honor.

8 THE COURT: Thank you. I have considered
9 the evidence in this matter, and have considered the
10 memorandum that has been filed by both parties.
11 Those memorandums are well prepared. Thank you,
12 counsel, they are well done.

13 Based upon the information before the
14 Court, the Court will deny the request to modify the
15 release conditions at this time. Mr. Zickerman, you
16 said there was another issue that you wish to have
17 the Court address.

18 MR. ZICKERMAN: Yes, Judge. The State is
19 bringing this up for the record, and also simply on
20 an ethical issue.

21 MR. GONZALES: Your Honor, not to
22 interrupt, but I have expected at this point we
23 could have a sidebar temporarily.

24 MR. ZICKERMAN: I don't object, but it will
25 have to be on the record.

1 THE COURT: Well, I don't know how we get
2 more sidebar than what we are now, with the people
3 in the courtroom. Go ahead, and I will seal the
4 record if we need to, counsel.

5 MR. ZICKERMAN: Judge, it has been brought
6 to the State's attention by looking at the file,
7 that counsel will need to file or at least avow to
8 the Court that he has spoken to his client about a
9 waiver of potential conflict. That conflict is
10 this, the counsel's wife works at the County
11 Attorney's Office, she has firsthand knowledge of
12 this particular case, by not only charging the case,
13 but taking it to Grand Jury. There is an appearance
14 of impropriety or potential conflict that exists,
15 although the State is taking the noted steps of
16 creating a Chinese wall around that particular
17 attorney within the office.

18 In discussing this with my supervisor, it
19 has been relayed that the conflict is essentially on
20 to counsel's shoulders and that his client will have
21 to waive any conflict if one appears or becomes
22 present, as in this case, having the spouse on the
23 other side of the coin.

24 The State feels it is necessary to bring
25 this up and place it on the record for any potential

1 issue, regarding Rule 32 appellate, et cetera.

2 Thank you.

3 THE COURT: Mr. Gonzales.

4 MR. GONZALES: Your Honor, of course, with
5 respect to this issue, I mean, obviously with Alexia
6 being a prosecutor, my wife, it is an issue and it
7 is an issue we dealt with on several other occasions
8 with two other judges. We pooled ethic opinions
9 dealing with this specific situation, where in the
10 past spouses that were adverse created a conflict of
11 interest and there was no way you can waive, but
12 what they have done now, the rules have changed.
13 Ethical rules allow parties to be adverse, spouses
14 to be adverse to each other, the only interest is,
15 of course, there is a conflict with respect to both
16 sides and they need waivers from both sides.

17 In this particular case, there is no
18 conflict, Alexia had this case, or Ms. Sedillo had
19 this case in the early stages. After it went to
20 Grand Jury is when I took the case over. She is not
21 working on the case now. She is not adverse to me.
22 We contacted the State Bar at least three times, and
23 they tell us the same thing, you guys are not
24 adverse to each other, you do not have a conflict.
25 Of course, the way the other judges in this

1 jurisdiction have handled it, well, I will just have
2 a conversation with your client or with the State,
3 if there is a conflict, you guys need to waive it.
4 Even at that sense my client will waive whatever
5 conflicts are there, but I am here to argue there is
6 no conflict. If the county believes there is a
7 conflict, only with respect to my side, that is not
8 true, obviously they themselves would need to waive
9 a potential conflict, which again is not the case.
10 I published -- I have also printed the published
11 opinions for Your Honor, and also for the
12 prosecutor.

13 THE COURT: That is okay, counsel, I am
14 familiar with it. The only thing I think sounds to
15 me like what is happening is, we want to make sure
16 it doesn't come back and bite us later on, so what I
17 would like to do is just for the limited purpose of
18 this conflict issue address your client and confirm
19 he has talked to you about it, have him put on the
20 record he understands potential for the conflict and
21 he waives that, so that we don't go all of the way
22 through the process and then he says, nobody told me
23 about it, or I didn't understand it, that sort of
24 thing. We have it on the record he does understand.

25 MR. GONZALES: That would be fine with me,

1 just give me two seconds.

2 MR. ZICKERMAN: And Judge, for the record,
3 that is exactly what the State was seeking.

4 MR. GONZALES: I appreciate that, Your
5 Honor, but it is every single court case is the same
6 thing.

7 THE COURT: I understand, it is one of the
8 things that I will have to do.

9 MR. GONZALES: Your Honor, thank you.

10 THE COURT: Okay, let the record reflect
11 that the defense counsel has had a couple of minutes
12 to talk with his client about the potential issues
13 in this matter.

14 You are Nathan Bell; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Bell, the legal system is
17 very concerned about not only propriety, but the
18 appearance of impropriety. We want to make sure
19 everybody understands everything is above board and
20 nobody is doing things behind the scenes; do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What is going on here is
24 because your attorney's wife works for the
25 prosecutor's office, somebody looking from the

1 outside, they might say, Well, they can't do that,
2 you can't represent -- he can't represent you while
3 his wife works for the prosecutor's office. Well,
4 we can do that under certain circumstances and that
5 is that first off, your attorney's wife is sort of
6 isolated from the case, so she has no input to the
7 case. She doesn't have any ability to affect the
8 case at all. That is number one, and the prosecutor
9 assured us that is taking place.

10 Number two, it sort of falls on your
11 shoulders, and that is that you need to understand
12 what the conflict is, because you can waive it. In
13 other words, you can say I understand that there is
14 this appearance, but I waive that problem, there is
15 not a problem. The question is, is if you waive it
16 or the problem is, if you waive it, it is waived for
17 good. You cannot come back later and say, say you
18 went to trial and say you were convicted in this
19 matter or you have entered into a plea and you were
20 sentenced in this matter, you cannot come back later
21 and then say, I didn't understand what the conflict
22 was. Okay?

23 So I have two issues here to talk with you
24 about it. Number one is, do you understand what I
25 am talking about when I mentioned this conflict? Do

1 you, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Your attorney has
4 explained what we are talking about here.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Although Ms. Sedillo, his wife,
7 has no connection with this lawsuit, she still works
8 for the prosecutor's office, although she has no
9 affect on your case; do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Other than what happened before
12 your attorney was involved in the case, do you
13 understand?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Now that is number one
16 that you understand what the conflict is. Number
17 two, you really do need to understand once you say,
18 I waive the conflict, I want my attorney to continue
19 to represent me, then whatever happens, happens, and
20 you are stuck with that result; do you understand
21 that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Are you willing to waive
24 those conflicts, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You understand it fully,
2 correct?

3 THE DEFENDANT: Yes.

4 THE COURT: Why don't you tell me what you
5 understand?

6 THE DEFENDANT: Basically, I got that she
7 works with the prosecutor's office and she has no --
8 she cannot look into -- she can look into my file,
9 but not get involved in my case, and since my
10 attorney knows her, they can't be giving information
11 to each other to help me out in my case. I
12 understand.

13 THE COURT: You do understand, I am glad of
14 that. And you understand if you waive this
15 conflict, you can't use it later on, it is a done
16 deal, it is over with; do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Anything else,
19 Mr. Zickerman?

20 MR. ZICKERMAN: No, Judge, the State
21 appreciates the Court's time.

22 THE COURT: You bet. And we stand
23 adjourned. I think you have your next hearing date
24 is August 19th, is your next case management
25 conference. So counsel, good luck to you.

1 MR. GONZALES: Thank you.

2 THE COURT: Thank you all very much.

3 (Whereupon, Court adjourned at 11:00 p.m.)
4
5

6 C E R T I F I C A T E

7 I, Patricia Yerkes, RMR-RDR, CRR, do hereby
8 certify that the foregoing transcript constitutes a
9 full, true, and correct report of the proceedings
10 which then and there took place.
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13 Court Reporter
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